

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

APR 11 2012

Charge Massingale

STATE OF GEORGIA)	
)	INDICTMENT
vs.)	11-CR-67684
)	
STEPHEN MARK McDANIEL)	MURDER
)	

ORDER ON DEFENDANT'S MOTION FOR BOND

The above-styled case comes before the Court on Defendant's Motion for Bond, in which Defendant requests that the Court "set a reasonable bond." On April 3, 2012, the Court held a hearing on the Motion. After carefully considering the Motion, the twenty exhibits filed in support thereof, and the arguments made by counsel, the Court enters the following order:

During the hearing, the State and Defendant stipulated that Defendant is entitled to bail on the murder charge and that the only question before the Court is the amount of bail. However, as explained below, there are three unresolved issues, namely: (a) Defendant's burden of producing evidence to show that he poses no significant risk to any person before Defendant may be released on bail, (b) the conditions of bond, and (c) the monitoring of Defendant's compliance with the conditions of bond. Nonetheless, the Court agrees with the parties that because Defendant was not indicted within 90 days of his arrest and because no motion to extend the 90 day period was filed by the district attorney, Defendant is entitled to bail, pursuant to O.C.G.A. § 17-7-50.¹ In construing O.C.G.A. § 17-7-50, the Georgia

¹ O.C.G.A. § 17-7-50 provides:

Any person who is arrested for a crime and who is refused bail shall, within 90 days after the date of confinement, be entitled to have the charge against him or her heard by a grand jury having jurisdiction over the accused person; provided, however, that if the person is arrested for a crime for which the death penalty is being sought, the superior court may, upon motion of the district attorney for an extension and after a hearing and good cause shown, grant one extension to the 90 day period not to exceed 90 additional days; and, provided, further, that if such extension is granted by the court, the person shall not be entitled to have the charge

Supreme Court held, "even though [Defendant] did not petition for bond within 90 days of his arrest and incarceration, the fact that he remained in jail is tantamount to his being 'refused bail.'" *State v. English*, 276 Ga. 343, 348(3) (2003). Defendant has remained incarcerated since his arrest. Therefore, Defendant "shall have bail set upon application to the court." O.C.G.A. § 17-7-50.

The Court hereby **ORDERS** that bail is set in the amount of eight hundred and fifty thousand dollars (\$850,000.00). This amount of bail is larger than the self-reported financial assets of Defendant and Defendant's parents. Yet, that is not unusual in the Court's experience. All terms and conditions of bond generally used in Bibb County also apply in this case. The Court further **ORDERS** that each of the following special conditions be imposed on Defendant as conditions to his being released on bail:

(1) Defendant shall wear an ankle monitor at all times upon his release. The ankle monitor will be supervised by an individual or agency approved by the Sheriff of Bibb County. Defendant shall be responsible for paying all costs associated with the ankle monitor.

(2) Upon his release, Defendant immediately shall be transported to his parents' house in Lilburn, Georgia. Defendant shall not leave the curtilage of his parents' house in Lilburn, Georgia, unless Defendant is traveling to the office of his trial counsel with the express permission of trial counsel or unless Defendant is traveling to regularly scheduled court appearances with the express permission of the Court.

(3) Defendant shall not be alone with minor children under any circumstances. If any minor child is present at his parents' house in Lilburn, Georgia, at least one adult other than Defendant, including one of Defendant's parents or one or more adult who is approved by Defendant's parents, must remain on the premises with Defendant at all times when both Defendant and minor children are present.

against him or her heard by the grand jury until the expiration of such extended period. In the event no grand jury considers the charges against the accused person within the 90 day period of confinement or within the extended period of confinement where such an extension is granted by the court, the accused shall have bail set upon application to the court.

(4) Defendant shall not access, use, or possess any electronic communication devices including, but not limited to, cellular phones and computers. However, this condition shall not preclude Defendant from using such devices to communicate with either his trial counsel or his parents.

(5) Defendant shall not access, use, or possess any weapons.

Additionally, it is **ORDERED** that Defendant shall not be released on bail until a plan is filed by Defendant and approved by the Court, detailing all arrangements made to ensure that Defendant fully complies with all conditions of bail set forth herein.

Defendant shall not be released on bail until all requirements under Georgia law regarding the Court's authority to release a person on bail are satisfied. One statutory requirement set forth in O.C.G.A. § 17-6-1(e) provides that:

(e) A court shall be authorized to release a person on bail if the court finds that the person:

- (1) Poses no significant risk of fleeing from the jurisdiction of the court or failing to appear in court when required;
- (2) Poses no significant threat or danger to any person, to the community, or to any property in the community;
- (3) Poses no significant risk of committing any felony pending trial; and
- (4) Poses no significant risk of intimidating witnesses or otherwise obstructing the administration of justice. [Emphasis added.]

The Georgia Supreme Court recently explained that the use of "[t]he conjunctive 'and' [in O.C.G.A. § 17-6-1(e)(3)] indicates that the trial court may grant bail only if it finds that none of the four risks exists." *Constantino v. Warren*, 285 Ga. 851, 854 (2009). The Court finds that Defendant has satisfied the burden of production regarding three of the four risks set forth in O.C.G.A. § 17-6-1(e). However, Defendant has not satisfied the burden of production regarding whether he poses "no significant threat or danger to any person," at this juncture. O.C.G.A. § 17-6-1(e)(2).

Specifically, Defendant has not met the burden of producing evidence that he will pose "no significant threat or danger" to the minor children currently residing in the house of

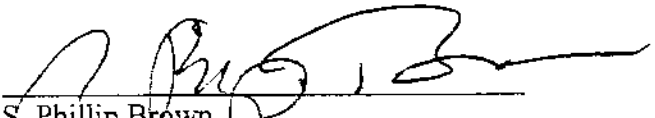
Defendant's parents in Lilburn, Georgia, the same house where Defendant asks that he reside after being released on bail. See O.C.G.A. § 17-6-1(e)(2). The parties have not offered any suggestions about how the Court should reconcile: (a) Defendant's statement in open court about minor children residing in Defendant's parents' house, and (b) the State's request in open court that Defendant not have any unsupervised interactions with minor children. Given the seriousness of the charges in this case and Defendant's other pending criminal case, *State of Georgia v. Stephen Mark McDaniel*, 11-CR-67685, which involves thirty counts of sexual exploitation of children, the Court cannot authorize Defendant's release on bail until Defendant initially comes forward with evidence that Defendant being released on bail and living in his parents' house would not pose a significant risk to the minor children currently residing in the house of Defendant's parents. These children clearly fall within the phrase "any person" as set forth in O.C.G.A. § 17-6-1(e)(2). Absent adequate safeguards for monitoring Defendant's compliance with the bond conditions, the Court is concerned about unsupervised interactions between Defendant and the minor children currently residing in Defendant's parents' house.

The Court remains troubled that there is no evidence on the record regarding how Defendant's special conditions of bail could be monitored by any appropriate entity while Defendant resides in his parents' house in Lilburn, Georgia. Defendant's parents' house in Lilburn, Georgia, is located approximately 100 miles from Macon, Georgia. The parties have not identified any appropriate entity, such as, a probation office, that could or would assume the responsibility of monitoring Defendant's compliance with the special conditions of bond. Not even Defendant's parents averred that they could or would monitor Defendant at all times. To the contrary, Defendant offered evidence that his father works outside the home as a residential painter and that his mother has interests outside the home, including family mission

trips. As a result, the Court questions whether there is any way to adequately monitor that Defendant does not have any unsupervised interactions with minor children and that Defendant does not access, use, or possess any electronic communication device for any reason other than to communicate with his trial counsel or his parents.

Therefore, the Court instructs Defendant to make suitable arrangements with an appropriate individual or entity capable of monitoring Defendant's compliance with all conditions of bail set forth herein. Any such arrangement should provide for periodic reporting by the individual or entity to the parties and the Court concerning Defendant's compliance with this order. Any proposed plan filed by Defendant should specify who will pay for all expenses related to the monitoring of Defendant's compliance with the conditions of bail. The Court must review and must approve of any proposed monitoring plan before the Court will authorize Defendant's physical release on bail. This is to make certain that Defendant will be monitored by an appropriate individual or entity in order to ensure that Defendant fully complies with all conditions of bail in the above-styled case. The Court retains jurisdiction of this matter to monitor and to adjust the terms of Defendant's bail as needed.

SO ORDERED, this 11th day of April, 2012.


S. Phillip Brown
Chief Judge, Superior Court of Bibb County
Macon Judicial Circuit

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the **ORDER ON DEFENDANT'S MOTION FOR BOND** in the above-styled case by mailing with sufficient postage affixed thereto a copy of the aforementioned order to the following parties:

Mr. Gregory W. Winters
Office of the District Attorney
661 Mulberry Street
Macon, GA 31201

Ms. Nancy Scott Malcor
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Macon, GA 31201

Mr. Floyd M. Buford, Jr.
136 College Street
P.O. Box 4747
Macon, GA 31208

Mr. Franklin J. Hogue
341 Third Street
P.O. Box 1795
Macon, GA 31202

This 11th day of April, 2012.

S. Phillip Brown
Chief Judge, Superior Court of Bibb County
Macon Judicial Circuit